

TO: Joyce M. Grossnickle, Administrative Officer

FROM: Michael G. Marschner, Director, DUSWM

DATE: September 1, 2009

Subject: Ballenger-McKinney ENR WWTP Expansion Grant Agreement for Planning, Design and Construction

Presenter (Name & Title): Kevin Demosky, Deputy Director, Division of Utilities and Solid Waste Management (DUSWM)

Requested Date: September 3, 2009

Phone: x12997 or x12963

Type of Briefing: (Click box to select)



Administrative Business



Worksession



Closed Session



BOCC/BOE Mtg.



County/Municipal Mtg.



Public Hearing

Board Action Desired:



Decision



Guidance



Information



PowerPoint Presentation

Staff Coordination: This topic has been **thoroughly** coordinated with the following Division/Department Directors, and they will have representatives at the presentation: (click to place a check mark in the appropriate box).

	Staff	Initials	Date	Comments
<input checked="" type="checkbox"/>	County Attorney	WML	9/1/09	
	County Manager			
<input checked="" type="checkbox"/>	Finance Director	GRK	9/1/09	
<input checked="" type="checkbox"/>	Budget Officer	MJR	9/1/09	
	Fire & Rescue Services Dir.			
	Management Services Director			

	Staff	Initials	Date	Comments
	Permitting & Development Review Director			
	Planning Director			
	Public Works Director			
<input checked="" type="checkbox"/>	Utilities and Solid Waste Management Director			See attached memorandum
	Elected Officials			
	Independent Agencies			
	Other			

Attachments:



Yes



No

PLEASE NOTE: The **original and 10 copies** of all attachments (including the coordination sheet) are required for the Board of County Commissioners' meetings, which includes the Joint BOCC/BOE Meeting and the County/Municipal Meeting.

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Date

Signature

Date

Signature

Date

Signature

Date

Signature

Date

Signature



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President

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Vice President

Kai J. Hagen

Charles A. Jenkins

John L. Thompson, Jr.

COUNTY MANAGER

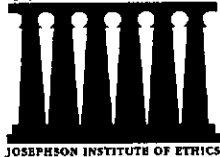
Douglas D. Browning

UTILITIES AND SOLID WASTE MANAGEMENT DIVISION

Michael G. Marschner
Division Director

Kevin L. Demosky
Deputy Director

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UTILITIES AND SOLID WASTE MANAGEMENT DIVISION FREDERICK COUNTY, MARYLAND

Office of the Division Director

4520 Metropolitan Court • Frederick, Maryland 21704
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www.co.frederick.md.us

MEMORANDUM

TO: Board of County Commissioners (BOCC)

THRU: Michael G. Marschner, Director, Division of Utilities and Solid Waste Management (DUSWM)

FROM: Kevin L. Demosky, Deputy Director, DUSWM

DATE: September 1, 2009

RE: Revised ENR Agreement
Ballenger-McKinney ENR WWTP Expansion
Frederick County Contract No. 200A-S

ISSUE: Should the BOCC execute the attached Maryland Department of the Environment (MDE) revised Enhanced Nutrient Removal (ENR) Grant Agreement for the Ballenger-McKinney ENR WWTP Expansion?

BACKGROUND: The BOCC approved the MDE ENR Agreement on June 27, 2006, as recommended by DUSWM.¹ The grant funding for the ENR improvements have been established (as a percentage of the total project costs), based on those facilities that are needed and are ENR eligible for grant funding.² In a letter dated July 30, 2009, MDE has offered a complementary SRF loan amount of \$76 million, which includes Water Quality State Revolving Loan Fund (WQSRF) and American Recover and Reinvestment Act (ARRA) monies.

In conjunction with the loan application process, a revised ENR Agreement needs to be executed. A review of the revised agreement indicates several changes, none of which DUSWM objects to. Moreover, revisions to the *Conditions of Financial Assistance Award*, particularly item 21 has been confirmed by MDE to not applicable to the previously procured A&E contract.

RECOMMENDATION: DUSWM recommends approval by the BOCC of the attached ENR Agreement and to reaffirm its authorization for the Director of DUSWM to file, on behalf of the BOCC, subsequent application(s) for financial assistance from MDE and to execute other documents in connection with the grant agreement.

Attachments

¹ DUSWM memorandum dated June 21, 2006 and BOCC meeting minutes are attached.

² MDE letter dated August 25, 2006 from Dr. Ta-Shon Yu to Michael Marschner and attached herewith.

MARYLAND DEPARTMENT OF THE ENVIRONMENT

AND

FREDERICK COUNTY

GRANT AGREEMENT FOR ENHANCED NUTRIENT REMOVAL

To help achieve Maryland's nutrient loading goals for the Chesapeake Bay, the Maryland Department of the Environment (the "Department") is providing financial assistance to undertake additional nutrient removal at wastewater treatment plants (WWTPs) that contribute nutrient loading to the Chesapeake Bay.

To provide for such additional nutrient removal, the Department is implementing a strategy known as Enhanced Nutrient Removal (ENR). In accordance with the Bay Restoration Fund Act, the Maryland Water Quality Financing Administration, a unit of the Maryland Department of the Environment (the "Administration") shall provide financial assistance to upgrade wastewater treatment facilities in order to achieve ENR.

The ENR Strategy and the Bay Restoration Fund Act set forth annual average nutrient goals of WWTP effluent quality of Total Nitrogen (TN) at 3 mg/l as "N" and Total Phosphorus (TP) at 0.3 mg/l as "P", where feasible, for all major WWTPs with a design capacity of 0.5 million gallons per day (mgd) or greater. Other wastewater treatment plants may be selected by the Department for upgrade on case-by-case basis and based on the cost effectiveness of the upgrade and other factors.

THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Maryland Department of the Environment, the Maryland Water Quality Financing Administration, and Frederick County hereby AGREE this _____ day of _____ 200__ that:

OBLIGATIONS OF THE FREDERICK COUNTY

I.1 Frederick County shall proceed with the planning, design, construction, and upgrade of the Ballenger-McKinney Wastewater Treatment Plant to achieve ENR and to meet annual average nutrient goals of plant effluent quality on Total Nitrogen at 3 mg/l and on Total Phosphorous at 0.3 mg/l as provided in the Bay Restoration Act and the ENR Strategy.

I.2 Frederick County agrees to comply with the Conditions of Financial Assistance Award for the planning, design, construction, and upgrade of the Ballenger-McKinney WWTP to achieve ENR in accordance with the approved project budget and any engineering study approved by the Department.

I.3 Frederick County shall develop the project schedule and shall obtain the Department's approval of the project schedule within 90 days of full execution of this agreement.

I.4 Frederick County shall provide the Department an Engineer's estimate of project costs attributable to ENR prior to bidding for construction contracts or seeking proposals for a design-build contract.

I.5 Frederick County prior to awarding the construction contract or design-build contract, shall obtain procurement approval from the Department.

I.6 Frederick County shall operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels.

I.7 Frederick County shall apply the proceeds of this Grant to finance Eligible Project Costs only.

I.8 Frederick County in utilizing the proceeds of this Grant shall be subject to the provisions of any applicable bond resolution.

OBLIGATIONS OF THE DEPARTMENT

II.1 The Department and the Administration agree to use their best efforts to obtain adequate State funding for the eligible project costs through legislative appropriations, and issuance of revenue bonds, subject to approval from the Maryland Board of Public Works.

II.2 Subject to the availability of funds, the Department shall provide up to 100% of the eligible cost of planning, design, construction, and upgrade of the Ballenger-McKinney WWTP to achieve ENR.

II.3 In accordance with Section 9-342.1 (i)(2) of the Environment Article, the Department will exercise discretion to the fullest extent possible to grant a waiver to Frederick County for discharge permit violations that may occur as a result of ENR construction under a program and schedule approved by the Department.

GENERAL CONDITIONS

III.1 The State financial assistance provided for under this agreement is subject to availability of State funds, availability of revenue bond funds, and is contingent upon approval by the Maryland Board of Public Works.

III.2 The State financial assistance provided for under this agreement is limited to eligible project costs that would be attributable to upgrading a wastewater facility from Biological Nutrient Removal to ENR as determined by the Department in its sole discretion.

ATTEST:

**MARYLAND DEPARTMENT OF THE
ENVIRONMENT**

WITNESS

**Terri Wilson, Director
Office of Budget and Financing**

DATE

**MARYLAND WATER QUALITY FINANCING
ADMINISTRATION**

WITNESS

**Jag Khuman
Director**

DATE

ATTEST:

FREDERICK COUNTY

WITNESS

**Jan H. Gardner
President, Frederick County
Board of County Commissioners**

DATE

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Water Quality Infrastructure Program
1800 Washington Boulevard • Baltimore MD 21230
(410) 537-3000 • 1-800-633-6101 • <http://www.mde.state.md.us>

CONDITIONS OF FINANCIAL ASSISTANCE AWARD

Project Name: _____

Project Number: _____

Upon the receipt of financial assistance from the Maryland Department of the Environment (the "Department"), the following conditions are understood and accepted by the applicant as conditions binding upon the recipient organization.

1. The recipient agrees to utilize the State funds for the project described in the Application for Financial Assistance and as approved by the State Board of Public Works.
2. The recipient agrees to make a good faith effort to secure sufficient funds to cover all project costs not financed by State funds.
3. The recipient agrees to adhere to the schedule submitted in its Application for Financial Assistance and take all appropriate actions to ensure that this schedule is maintained. In the event that the project is delayed for reasons beyond the control of the recipient, this schedule may be revised with the approval of the Department. The Department's policy requires that projects be initiated, constructed, and placed into operation in a timely manner.
4. The recipient agrees to submit to the Department for review all Architectural/Engineering (A/E) service contracts prior to execution if state financial assistance is to cover the costs.
5. The recipient agrees to select A/E consulting firm(s) for planning, design, construction management/inspection and/or grant management in accordance with pertinent Local, State and Federal laws and regulations.
6. The recipient agrees that it will only award a contract to an A/E consulting firm upon proof of professional liability insurance in an amount reasonable and customary for the services being performed.
7. The recipient agrees not to advertise for bids for construction contracts prior to obtaining written approval of the plans and specifications from the Department.
8. The recipient agrees to provide the Department (if requested) an updated project construction cost estimate prior to advertising for bids for construction.
9. For construction contracts greater than \$100,000, the recipient agrees to procure contractors using formal bidding procedures by advertising the request for bids in publications having appropriate widespread circulation. For contracts less than \$100,000, the recipient has the option to use the small purchase procurement procedures or the formal bidding procedures. For additional information, please contact the Department.
10. The recipient agrees to select the contractor for construction of the project in accordance with applicable Local, State, and Federal laws and not award a construction contract until:
 - a. the contractor has posted a Performance Bond and a Payment Bond for 100% of the contract price (generally applicable to contracts over \$100,000 or as determined by the Department);
 - b. the contractor has signed the assurances provided in the "State Insert" included with the contract documents;
 - c. the recipient can certify that adequate A/E inspection and supervision will be provided at the construction site to ensure project construction conforms with the approved plans and specifications; and
 - d. a written approval to award the contract has been received from the Department.
11. Prior to construction start, the recipient agrees to secure all necessary permits, rights-of-way and easements, and undertake any reasonable action resulting from the environmental, design, permitting or state clearinghouse reviews.
12. The recipient agrees to follow best construction management and inspection practices to construct the project in accordance with plans and specifications approved by the Department.
13. Unless waived by the Department, the recipient agrees to post a project sign in the manner and format prescribed by the Department prior to initiating construction.
14. The recipient agrees to obtain prior written approval from the Department for all change orders that significantly alter the project. Change orders that do not significantly alter the project do not require prior approval; however, they must be submitted to the Department within 30 calendar days of execution if financial assistance is to cover change order costs.
15. The recipient agrees to permit and assist State employees to monitor the project construction during normal working hours.
16. The recipient agrees to allocate sufficient funds and operate and maintain the facilities, in accordance with applicable sections of Title 9 of the Environment Article, for the purposes for which it was constructed.
17. The recipient agrees to provide any reasonable information concerning the project in a manner and form prescribed by the Department.
18. The recipient agrees to seek all payments, loans or otherwise, on a reimbursement basis only, unless otherwise authorized by the Department.
19. The recipient agrees to maintain adequate accounting records for a period of three years following the Department's administrative closeout of the project and make them available to the Department for inspection and audit when requested. The recipient's accounting records will at a minimum provide the following:
 - a. provision that the recipient must provide a detailed budget (breakdown of category and cost) including any advances on costs to be incurred;
 - b. A provision requiring the recipient to provide a schedule of spending (related to the budget detail);
 - c. A provision requiring a deliverable schedule from the recipient (linked to the spending schedule);
 - d. A provision requiring a periodic financial summary (defining expended funds in association with the budgeted categories and schedule of spending);
 - e. A provision requiring the contractor to maintain all records relating to the grant until the grant has been audited or three years from the completion of the project, whichever is earlier; and
 - f. A provision indicating that MDE may audit any records in conjunction with a project at any time, in person, or request that a copy of the records be forwarded to MDE for verification.



20. The recipient agrees to comply with Title VI of the Civil Rights Act of 1964 - no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under program or activity for which the applicant received State financial assistance.
21. The recipient is required to make good-faith efforts to utilize Minority and Women's Business Enterprises (M/WBE) to participate in procurements involving MDE state grant funds. This requirement applies to projects receiving any grant funding from the Bay Restoration Fund and projects receiving more than \$500,000 in grant funding from the Water Pollution Control Fund and the Water Supply Financial Assistance Program. Please visit MDE's website for guidance.
22. The recipient hereby certifies that all project activities will comply with the tax-exempt bond provisions of the Internal Revenue Code and would not constitute a change in use or private activity.
23. For drinking water and sewerage projects, the recipient certifies that the proposed project is consistent with and is included in an approved water and sewerage area as outlined in the County Water and Sewerage Plan adopted by the County governing body pursuant to §9-501, et seq., of the Environment Article.
24. For financial assistance under the "Sewerage Supplemental Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26.03.08 - Water Pollution Control Fund Construction Financial Assistance Regulations.
25. For financial assistance under the "Nutrient Removal Cost-Share Programs", the recipient agrees to adhere to the provisions of the cost-share agreement and contribute local match for each phase of the project accordingly.
26. For project financial assistance under the "Water Supply Financial Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26.03.09 - Water Supply Construction Financial Assistance Regulations, to provide salvage rights by the State upon default by the recipient and contribute at least 12.5% of the total eligible project cost as local match. Unless waived by the Department, all costs exceeding 5% of the original total grant/loan award or costs not authorized by the Department are the responsibility of the recipient. The Department may void the grant if construction has not commenced within 6 months of the award for construction and the recipient agrees to repay all funds with interest.
27. For financial assistance under the "Stormwater Pollution Control Cost-Share Program", the recipient agrees to adhere to the provisions of COMAR 26.03.06, contribute at least 25% of total eligible project cost as local match, maintain the functions of the project for 15 years in the manner necessary to obtain the intended water quality benefits, and if requested by the Department, to grant the Department a security interest in any equipment or similar item purchased with State funds.
28. For financial assistance under the "Small Creeks and Estuaries Restoration Cost-Share Program", recipient agrees to contribute at least 50% of the total eligible project cost as local match and maintain the functions of the project for its useful life in the manner necessary to obtain the intended water quality benefits. The total state grant is limited to a maximum of \$500,000 per project.
29. For Stormwater Pollution Control and Small Creeks and Estuaries Restoration Projects, the recipient shall require any successor to the land title/deed to be bound by the terms of the project, if the project is constructed on private property.
30. For financial assistance under the Bay Restoration Fund Act and ENR Strategy, the recipient shall be required to comply with Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland as applicable, any regulations promulgated thereunder, and any applicable bond resolutions.
31. For financial assistance under the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, the recipient is required to comply with Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland as applicable, and any regulations and directives promulgated thereunder.
32. At the completion of the construction of the project, the recipient agrees to submit, if appropriate to the project, a set of "as built" drawings certified by a professional engineer or a soil conservation district engineer.
33. The recipient agrees to submit a final claim for reimbursement of costs within sixty days of the Department's final inspection of the project.
34. The recipient agrees that the Department may deny any request for funds if the recipient fails to comply with any of the above conditions of financial assistance award.
35. The recipient agrees that the State Board of Public Works may terminate financial assistance upon the recommendation of the Department if the Department determines in its discretion that there is:
- failure to perform without good cause; or
 - gross abuse or corrupt practices in the administration of the project; or
 - poor, non-standard, or unsafe construction procedures; or
 - failure to comply with any of the conditions of financial assistance award or applicable State laws, regulations, or Departmental policies; or
 - failure to adhere with the approved project schedule.
36. The recipient agrees to repay the State (with interest, based on current bond rate and assessed from the date the said funds were received), on demand, any funds received that were misapplied (i.e., not expended in accordance with the terms of these conditions of financial assistance award or applicable State laws, regulations and Departmental policies). In the event that the recipient fails to refund upon demand any misapplied funds, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the misapplied funds plus interest.
37. The recipient agrees to return, within 30 days of a written request by the Department, any excess funds received (i.e., total funding received from several funding sources exceeds 100% of project costs). In the event that the recipient fails to refund upon demand any excess funds released by the State, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the overpayment.
38. The recipient agrees to repay the State, immediately upon demand, the depreciated value (on a straight line basis) of the State grant, if the project assets are sold by a public entity or non-profit entity, to a for-profit entity anytime within 20-years of project completion.

I certify that the information provided with the financial assistance application is true to the best of my knowledge and agree to comply with the above Conditions of Financial Assistance Award.

Signature of Recipient's Authorized Representative

Date

Attested by: _____

(Name and Title)

Date: _____

2b

TO: Joyce M. Grossnickle, Administrative Officer

FROM:

Michael G. Marschner, Director

DATE:

June 22, 2006

Subject: Ballenger Creek WWTP ENR Grant Agreement for Planning and Design

Presenter (Name & Title): Michael G. Marschner, Director

Requested Date: ~~6-27-06~~ 6-27-06

Phone: x12568

Type of Briefing: (Click box to select)



Administrative Business



Worksession



Closed Session



BOCC/BOE Mtg



County/Municipal Mtg



Public Hearing

Board Action Desired:



Decision



Guidance



Information

Staff Coordination: This topic has been thoroughly coordinated with the following Division/Department Directors, and they will have representatives at the presentation (click to place a check mark in the appropriate box)

	Staff	Initials	Date	Comments
<input checked="" type="checkbox"/>	County Attorney	Wk	6/22/06	
	County Manager			
<input checked="" type="checkbox"/>	Finance Director	jd	6/22/06	
<input checked="" type="checkbox"/>	Budget Officer	mf	6/22/06	
	Fire & Rescue Services Dir.			
	Management Services Director			

	Staff	Initials	Date	Comments
	Permitting & Development Review Director			
	Planning Director			
	Public Works Director			
	Utilities and Solid Waste Management Director			
	Elected Officials			
	Independent Agencies			
	Other			

RECEIVED

JUN 22 2006

Office of
Administrative Officer

Attachments:



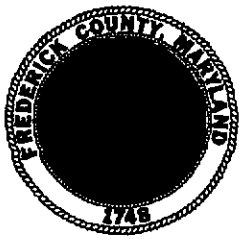
Yes



No

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UTILITIES AND SOLID WASTE MANAGEMENT DIVISION FREDERICK COUNTY, MARYLAND

Office of the Division Director

Mailing Address • 12 East Church Street • Frederick, Maryland 21701
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UTILITIES AND SOLID WASTE MANAGEMENT DIVISION

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TO: Board of County Commissioners (BoCC)

From: Michael G. Marschner, *Director*
Division of Utilities and Solid Waste Management

Date: June 21, 2006

ISSUE:

Should the BoCC execute the attached Maryland Department of the Environment (MDE) Enhanced Nutrient Removal (ENR) Grant Agreement for the Ballenger Creek WWTP?

BACKGROUND:

On May 26, 2004 the Governor signed Senate Bill 320, which established the Chesapeake Bay Restoration Fund. This fund, which derives part of its revenues from Frederick County Sewer System ratepayers, through the quarterly assessment of the Chesapeake Bay restoration fee, will be used to provide grants to 66 of Maryland's largest WWTP to implement ENR technology.

The purpose of the program is to provide State Funding to meet the new commitments under the 2000 Chesapeake Bay Agreement, which requires additional reductions of nutrient pollutants from all sources including wastewater treatment facilities. Upgrading WWTPs is one of the State's top environmental priorities. ENR technologies allow existing Biological Nutrient Removal (BNR) facilities, including the County's Ballenger Creek WWTP, to further reduce the amount of nitrogen and phosphorus discharged to tributaries of the Chesapeake Bay. ENR treatment technologies can reduce total nitrogen and total phosphorus to levels as low as 3 mg/l and 0.3 mg/l respectively. These values are about half that which are typically achieved using BNR technologies.

The DUSWM has been working on the Ballenger Creek WWTP ENR project since February 2005. A Facility Plan for implementing the ENR technology upgrade, in concert with the programmed expansion of the Ballenger-McKinney WWTP, has been completed by the County's consultants (Whitman Requardt & Associates and CH2MHILL). The Facility Plan has been used as the basis of design for the combined facility for which the formal design is presently being bid. The award of facility design services is expected to occur within the next two months.

Since last July the DUSWM has had several meetings and workshops with MDE to establish the specific ENR cost apportionment of project. The grant funding for the ENR improvements will likely be established as a percentage of the total project costs, based on those facilities that are needed and ENR eligible for grant funding. A separate ENR Grant Agreement for construction of the facility improvements will be necessary once the actual ENR cost apportionment is finalized with MDE.

*Please send all written correspondence to the address shown above
When visiting, our office location is 8 East Second Street, Frederick, Maryland*

Originally the MDE and DUSWM wanted to include all aspects of the project (Planning, Design and Construction) in a single complete grant agreement. However, the delay in the issuance of the Ballenger-McKinney WWTP's National Pollutant Elimination System (NPDES) permit and the County's need to move forward on the actual design of the facility, necessitate the execution of the Planning and Design ENR Grant Agreement and the ENR Construction Agreement in two separate steps. This will ensure that the County's costs for the planning and engineering activities, which are ENR grant eligible, will be recognized by MDE and recovered through the grant for the Ballenger Creek ENR project.

RECOMMENDATION:

The DUSWM Recommends the BoCC approve that attached Grant Agreement For Enhanced Nutrient Removal for the Ballenger Creek WWTP.

The DUSWM also recommends that the BoCC authorize (as provide for in Appendix A) the Director of the Division of Utilities and Solid Waste Management to file, on behalf of the BoCC, subsequent application(s) for financial assistance from the Maryland Department of the Environment and to execute other documents in connection with this grant application.

Enclosures:

Grant Agreement for Enhanced Nutrient Removal
Appendix A

MARYLAND DEPARTMENT OF THE ENVIRONMENT

AND

FREDERICK COUNTY

GRANT AGREEMENT FOR ENHANCED NUTRIENT REMOVAL

To help achieve Maryland's nutrient loading goals for the Chesapeake Bay, the Maryland Department of the Environment (the "Department") is providing financial assistance to undertake additional nutrient removal at wastewater treatment plants (WWTPs) that contribute nutrient loading to the Chesapeake Bay.

To provide for such additional nutrient removal, the Department is implementing a strategy known as Enhanced Nutrient Removal (ENR). In accordance with the Bay Restoration Fund Act, the Maryland Water Quality Financing Administration, a unit of the Maryland Department of the Environment (the "Administration") shall provide financial assistance to upgrade wastewater treatment facilities in order to achieve ENR.

The ENR Strategy and the Bay Restoration Fund Act set forth annual average nutrient goals of WWTP effluent quality of Total Nitrogen (TN) at 3 mg/l as "N" and Total Phosphorus (TP) at 0.3 mg/l as "P", where feasible, for all major WWTPs with a design capacity of 0.5 million gallons per day (mgd) or greater. Other wastewater treatment plants may be selected by the Department for upgrade on case-by-case basis and based on the cost effectiveness of the upgrade and other factors.

THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Maryland Department of the Environment, the Maryland Water Quality Financing Administration, and Frederick County hereby AGREE this _____ day of June, 2006 that:

OBLIGATIONS OF FREDERICK COUNTY

I.1 Frederick County shall proceed with the planning and design of the Ballenger Creek Wastewater Plant to achieve ENR and to meet annual average nutrient goals of plant effluent quality on Total Nitrogen at 3 mg/l and on Total Phosphorous at 0.3 mg/l as provided in the Bay Restoration Act and the ENR Strategy.

I.2 Frederick County agrees to comply with the Conditions of Financial Assistance Award (Appendix A) for the planning and design of the WWTP to achieve ENR in accordance with the approved project budget and any engineering study approved by the Department.

I.3 Frederick County shall apply the proceeds of this Grant to finance Eligible Project Costs only.

I.4 Frederick County in utilizing the proceeds of this Grant, shall be subject to the provisions of any applicable bond resolution.

OBLIGATIONS OF THE DEPARTMENT

II.1 The Department and the Administration covenant and agree to use its best efforts to obtain adequate State funding for the eligible project costs through legislative appropriations, and issuance of revenue bonds, subject to approval from the Maryland Board of Public Works.

II.2 Subject to the availability of funds, the Department shall provide up to 100% of the eligible cost for planning and design of the Ballenger Creek WWTP to achieve ENR.

GENERAL CONDITIONS

III.1 The State financial assistance provided for under this agreement is subject to availability of State funds, availability of revenue bond funds, and is contingent upon approval by the Maryland Board of Public Works.

III.2 The State financial assistance provided for under this agreement is limited to eligible project costs that would be attributable to upgrading a wastewater facility from Biological Nutrient Removal to ENR as determined by the Department in its sole discretion.

SIGNATURES ON NEXT PAGE

ATTEST:

**MARYLAND DEPARTMENT OF THE
ENVIRONMENT**

WITNESS

Robert M. Summers, Director
Water Management Administration

DATE

**MARYLAND WATER QUALITY FINANCING
ADMINISTRATION**

WITNESS

Jag Khuman
Director

DATE

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
FREDERICK COUNTY, MARYLAND**

Sharon C. Hale
WITNESS

WR 6/27/06

John L. Thompson, Jr.
BY:
John L. Thompson, Jr.
President, Frederick County
Board of County Commissioners

June 29, 2006
DATE

MARYLAND DEPARTMENT OF THE ENVIRONMENT
 1800 Washington Boulevard • Baltimore MD 21230
 (410) 537-3000 • 1-800-633-6101 • <http://www.mde.state.md.us>

CONDITIONS OF FINANCIAL ASSISTANCE AWARD

Project Name: BALLANGER CREEK WWTP

Project Number: _____

Upon the receipt of financial assistance from the Maryland Department of the Environment (the "Department"), the following conditions are understood and accepted by the applicant as conditions binding upon the recipient organization.

- 1 The recipient agrees to utilize the State funds for the project described in the Application for Financial Assistance and as approved by the State Board of Public Works
- 2 The recipient agrees to make a good faith effort to secure sufficient funds to cover all project costs not financed by State funds
- 3 The recipient agrees to adhere to the schedule submitted in its Application for Financial Assistance and take all appropriate actions to ensure that this schedule is maintained. In the event that the project is delayed for reasons beyond the control of the recipient, this schedule may be revised with the approval of the Department. The Department's policy requires that projects be initiated, constructed, and placed into operation in a timely manner
- 4 The recipient agrees to submit to the Department for review all Architectural/Engineering (A/E) service contracts prior to execution if state financial assistance is to cover the costs
- 5 The recipient agrees to select A/E consulting firm(s) for planning, design, construction management/inspection and/or grant management in accordance with pertinent Local, State and Federal laws and regulations
- 6 The recipient agrees that it will only award a contract to an A/E consulting firm upon proof of professional liability insurance in an amount reasonable and customary for the services being performed
- 7 The recipient agrees not to advertise for bids for construction contracts prior to obtaining written approval of the plans and specifications from the Department
- 8 The recipient agrees to provide the Department (if requested) an updated project construction cost estimate prior to advertising for bids for construction
- 9 For construction contracts greater than \$100,000, the recipient agrees to procure contractors using formal bidding procedures by advertising the request for bids in publications having appropriate widespread circulation. For contracts less than \$100,000, the recipient has the option to use the small purchase procurement procedures or the formal bidding procedures. For additional information, please contact the Department
- 10 The recipient agrees to select the contractor for construction of the project in accordance with applicable Local, State, and Federal laws and not award a construction contract until
 - a the contractor has posted a Performance Bond and a Payment Bond for 100% of the contract price (generally applicable to contracts over \$100,000 or as determined by the Department),
 - b the contractor has signed the assurances provided in the "State Insert" included with the contract documents,
 - c the recipient can certify that adequate A/E inspection and supervision will be provided at the construction site to ensure project construction conforms with the approved plans and specifications, and
 - d a written approval to award the contract has been received from the Department
- 11 Prior to construction start, the recipient agrees to secure all necessary permits, rights-of-way and easements, and undertake any reasonable action resulting from the environmental, design, permitting or state clearinghouse reviews
- 12 The recipient agrees to follow best construction management and inspection practices to construct the project in accordance with plans and specifications approved by the Department
- 13 Unless waived by the Department the recipient agrees to post a project sign in the manner and format prescribed by the Department prior to initiating construction
- 14 The recipient agrees to obtain prior written approval from the Department for all change orders that significantly alter the project. Change orders that do not significantly alter the project do not require prior approval, however, they must be submitted to the Department within 30 calendar days of execution if financial assistance is to cover change order costs
- 15 The recipient agrees to permit and assist State employees to monitor the project construction during normal working hours
- 16 The recipient agrees to allocate sufficient funds and operate and maintain the facilities, in accordance with applicable sections of Title 9 of the Environment Article, for the purposes for which it was constructed
- 17 The recipient agrees to provide any reasonable information concerning the project in a manner and form prescribed by the Department
- 18 The recipient agrees to seek all payments, loans or otherwise, on a reimbursement basis only, unless otherwise authorized by the Department
- 19 The recipient agrees to maintain adequate accounting records for a period of three years following the Department's administrative closeout of the project and make them available to the Department for inspection and audit when requested. The recipient's accounting records will at a minimum provide the following
 - a provision that the recipient must provide a detailed budget (breakdown of category and cost) including any advances on costs to be incurred,
 - b A provision requiring the recipient to provide a schedule of spending (related to the budget detail),
 - c A provision requiring a deliverable schedule from the recipient (linked to the spending schedule),
 - d A provision requiring a periodic financial summary (defining expended funds in association with the budgeted categories and schedule of spending).

- e A provision requiring the contractor to maintain all records relating to the grant until the grant has been audited or three years from the completion of the project, which ever is earlier, and
- f A provision indicating that MDE may audit any records in conjunction with a project at any time, in person, or request that a copy of the records be forwarded to MDE for verification
- 20 The recipient agrees to comply with Title VI of the Civil Rights Act of 1964 - no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under program or activity for which the applicant received State financial assistance
- 21 For drinking water and sewerage projects, the recipient certifies that the proposed project is consistent with and is included in an approved water and sewerage area as outlined in the County Water and Sewerage Plan adopted by the County governing body pursuant to §9-501, et seq., of the Environment Article
- 22 For financial assistance under the "Sewerage Supplemental Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26 03 08 - Water Pollution Control Fund Construction Financial Assistance Regulations
- 23 For financial assistance under the "Nutrient Removal Cost-Share Programs", the recipient agrees to adhere to the provisions of the cost-share agreement and contribute local match for each phase of the project accordingly
- 24 For project financial assistance under the "Water Supply Financial Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26 03 09 - Water Supply Construction Financial Assistance Regulations, to provide salvage rights by the State upon default by the recipient and contribute at least 12.5% of the total eligible project cost as local match. Unless waived by the Department, all costs exceeding 5% of the original total grant/loan award or costs not authorized by the Department are the responsibility of the recipient. The Department may void the grant if construction has not commenced within 6 months of the award for construction and the recipient agrees to repay all funds with interest
- 25 For financial assistance under the "Stormwater Pollution Control Cost-Share Program", the recipient agrees to adhere to the provisions of COMAR 26 03 06, contribute at least 25% of total eligible project cost as local match, maintain the functions of the project for 15 years in the manner necessary to obtain the intended water quality benefits, and if requested by the Department, to grant the Department a security interest in any equipment or similar item purchased with State funds
- 26 For financial assistance under the "Small Creeks and Estuaries Restoration Cost-Share Program", recipient agrees to contribute at least 50% of the total eligible project cost as local match and maintain the functions of the project for its useful life in the manner necessary to obtain the intended water quality benefits. The total state grant is limited to a maximum of \$500,000 per project
- 27 For Stormwater Pollution Control and Small Creeks and Estuaries Restoration Projects, the recipient shall require any successor to the land title/deed to be bound by the terms of the project, if the project is constructed on private property
- 28 For financial assistance under the Bay Restoration Fund Act and ENR Strategy, the recipient shall be required to comply with Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland as applicable, any regulations promulgated thereunder, and any applicable bond resolutions
- 29 At the completion of the construction of the project, the recipient agrees to submit, if appropriate to the project, a set of "as built" drawings certified by a professional engineer or a soil conservation district engineer
- 30 The recipient agrees to submit a final claim for reimbursement of costs within sixty days of the Department's final inspection of the project
- 31 The recipient agrees that the Department may deny any request for funds if the recipient fails to comply with any of the above conditions of financial assistance award
- 32 The recipient agrees that the State Board of Public Works may terminate financial assistance upon the recommendation of the Department if the Department determines in its discretion that there is
- a failure to perform without good cause, or
- b gross abuse or corrupt practices in the administration of the project, or
- c poor, non-standard, or unsafe construction procedures, or
- d failure to comply with any of the conditions of financial assistance award or applicable State laws, regulations, or Departmental policies, or
- e failure to adhere with the approved project schedule
- 33 The recipient agrees to repay the State (with interest, based on current bond rate and assessed from the date the said funds were received), on demand, any funds received that were misapplied (i.e., not expended in accordance with the terms of these conditions of financial assistance award or applicable State laws, regulations and Departmental policies). In the event that the recipient fails to refund upon demand any misapplied funds, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the misapplied funds plus interest
- 34 The recipient agrees to return, within 30 days of a written request by the Department, any excess funds received (i.e., total funding received from several funding sources exceeds 100% of project costs). In the event that the recipient fails to refund upon demand any excess funds released by the State, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the overpayment

I certify that the information provided with the financial assistance application is true to the best of my knowledge and agree to comply with the above Conditions of Financial Assistance Award.

John T. Thompson
Signature of Recipient's Authorized Representative

June 29 2006
Date

It is hereby resolved that Michael G. Marschner, Director DUSWM is authorized to file, on
(Name and Title of Recipient's Authorized Representative)

behalf of the Recipient, an application for financial assistance from the Maryland Department of the Environment, and to execute all other documents in connection with this application.

Attested by: _____
(Name and Title)

Date: _____

Demosky, Kevin

From: Alice Scanlon [ascanlon@mde.state.md.us]
Sent: Monday, August 31, 2009 11:23 AM
To: Demosky, Kevin; Rajiv Chawla
Cc: Marschner, Mike; Howell, Regina; Bernetta Richards; Monet Lea; Tsung-Pin Chen
Subject: Re: ENR Grant Agreement

Kevin,
It is my understanding that Engineering contracts approved prior to the DBE requirement will still receive the ENR grant. The County's agreement was approved on May 27, 2008. The DBE requirement for the grants went into effect in October 2008.

Thanks,
Alice

>>> On 8/28/2009 at 4:35 PM, "Demosky, Kevin" <KDemosky@fredco-md.net> wrote:

Raj,

As you are aware, Frederick County did not procure its A&E Contract utilizing M/WBE inserts. In our original ENR Agreement executed on June 29, 2006, the revised (and attached) Conditions of Financial Assistance Award, which complements the revised agreement has a new provision that states:

21. The recipient is required to make good-faith efforts to utilize Minority and Women's Business Enterprises (M/WBE) to participate in procurements involving MDE state grant funds. This requirement applies to projects receiving any grant funding from the Bay Restoration Fund and projects receiving more than \$500,000 in grant funding from the Water Pollution Control Fund and the Water Supply Financial Assistance Program. Please visit MDE's website for guidance.


Is there a way that the Agreement could acknowledge "relief" from this provision for the A&E/study efforts that preceded this change, particularly since we sent this to MDE awhile ago and we were told this could not be retroactively required? I typed a text box into the ENR Agreement as a rough idea?

Kevin L. Demosky

Deputy Director
Division of Utilities and Solid Waste Management
4520 Metropolitan Court
Frederick, Maryland 21704

Directions (click link): <http://md-frederickcounty.civicplus.com/documents/Utilities & Solid Waste Management/DUSWM Directions2.pdf>

Phone: (301) 600-2997 or (301) 600-2963
Fax: (301) 600-2180
E-mail: KDemosky@Fredco-md.net

 Please consider the environment before printing this email and if you chose to print, please remember to recycle the paper after its purpose.

Note: To reduce email clutter, unless requested to do so, typically I will not respond simply to acknowledge receipt or to thank you for your email, unless you ask me to do so.

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-----Original Message-----

From: Monet Lea [mailto:MLea@mde.state.md.us]
Sent: Wednesday, August 26, 2009 4:21 PM
To: Demosky, Kevin; Alice Scanlon
Cc: Marschner, Mike; Howell, Regina; Rajiv Chawla; Tsung-Pin Chen
Subject: Re: ENR Grant Agreement

Kevin,

Attached is a copy of the ENR agreement and Conditions of Financial Assistance Award. Please have both signed and returned to MDE as soon as possible. If you have any questions or concerns regarding these forms, I can be reached by email or phone.

Sincerely,

Monet L. Lea

410.537.3657

>>> "Demosky, Kevin" <KDemosky@fredco-md.net> 8/26/2009 3:19 PM >>>

Alice,

Per our telephone conversation, attached is a copy of the staff report and County-executed ENR Agreement from June 2006.

<<ENR Grant Agreement>>

Please send me the recently changed terms and conditions. Assuming the conditions have not materially changed, I'm not sure if we'll have enough time to be able to get the revised version in with the loan application package for the BOCC's consideration.

Kevin L. Demosky

Deputy Director

Division of Utilities and Solid Waste Management

4520 Metropolitan Court

Frederick, Maryland 21704

Directions (click link):

[http://md-frederickcounty.civicplus.com/documents/Utilities & Solid%
20Waste Management/DUSWM Directions2.pdf](http://md-frederickcounty.civicplus.com/documents/Utilities%20Waste%20Management/DUSWM%20Directions2.pdf)

Phone: (301) 600-2997 or (301) 600-2963

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If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

<<<<GWIASIG 0.07>>>>

Commissioner Cady moved to request staff to re-advertise the vacancies and that Ms. Eichelberger's application be reconsidered with the new applicants. Commissioner Reeder seconded the motion that passed 3 – 2, with Commissioners Thompson and Gardner opposed.

Revision to the FY 2007 Capital Improvements Program (CIP) Budget – John Kroll, Acting Assistant Director, Finance Division

Mr. Kroll presented a request for the Board to decide if they wanted to reflect the lesser amounts of funding in the adopted CIP due to a change that was not reflected in the CIP when it was adopted by the Board on June 6, 2006.

The Board took no action on this matter.

Ballenger Creek Wastewater Treatment Plant (WWTP) ENR Grant Agreement for Planning and Design – Mike Marschner, Utilities and Solid Waste Management Division (DUSWM)

Mr. Marschner presented a grant agreement for enhanced nutrient removal from the Ballenger Creek WWTP and requested Board approval of the document. Staff also recommended that the Board authorize the Director, DUSWM, to file on behalf of the Board any subsequent applications for financial assistance from the Maryland Department of the Environment and to execute other documents in connection with the grant application.

Commissioner Gardner moved to approve staff's recommendation, as presented, including the delegation of authority for the Director, DUSWM to execute other documents in connection with the grant application. Commissioner Reeder seconded the motion that passed 5 – 0.

WORKSESSION

Insurance Presentation for FY 2007 – Mike Beard, Risk Manager, Risk Management, Finance Division, and Members of the Insurance Committee

Mr. Beard and members of the Insurance Committee presented the insurance rates for county coverage for FY 2007. Staff requested that the Board approve the recommended coverage as presented.

Some of the numbers in the staff report were changed, making the FY 2007 total coverage cost \$3,996,927.

There was no public comment.

Commissioner Reeder moved to approve the outlined coverage totaling \$3,996,927. Commissioner Lovell seconded the motion that passed 5 – 0.

Timeline for the Affordable Housing Action Plan and Uses of the Affordable Housing Initiative Fund – Jenny Short, Director, Housing and Community Development, Citizens Services Division

Ms. Short presented a proposed Affordable Housing Action Plan timeline. Staff recommended that

Commissioner John L. Thompson, Jr., *President*, called to order a meeting of the Board of County Commissioners of Frederick County, Maryland, ("Board") for Tuesday, June 27, 2006, at 8:30 a.m. Present were Commissioners Mike Cady, *Vice President*; Jan Gardner and Bruce Reeder. Commissioner John Lovell, Jr. entered as noted below. Also present were Doug Browning, County Manager; and Deborah Smith, Recording Secretary.

Official Minutes of the Board of County Commissioners' meetings are kept on file in the County Manager's Office; the meetings are also video recorded. Approved minutes are available on the County web page. To receive a copy of meetings recorded on videotape or DVD, please contact the Board of County Commissioners at 301-694-1100 or visit the County web page at www.co.frederick.md.us

NOTE: Copies of all staff reports are available in the OnBase system. If you need assistance with the OnBase system, please contact the recording secretary.

PLEDGE OF ALLEGIANCE

The meeting began with the recitation of the Pledge of Allegiance.

ACTION ON THE AGENDA

None.

COMMISSIONERS COMMENTS

None.

ADMINISTRATIVE BUSINESS

Sub Lease Amendment for Extension of Warehouse Space for Election Equipment – Wayne Roach, Director, Facilities Services, Management Services Division

Mr. Roach presented a recommendation that the Board authorize staff to execute two (2) one-year extension options with Oak Crest LLLP for warehouse space to house the election equipment and approve an amendment of the sublease arrangement with Diebold for an extension of two (2) years and two (2) months, with a termination date of December 31, 2008.

(Commissioner Lovell entered the meeting at 8:45 a.m.)

Commissioner Gardner moved to authorize staff to execute two (2) one-year lease extensions, one year at a time with Oak Crest LLLP for warehouse space to house the election equipment and approve an amendment of the sublease arrangement with Diebold for an extension of two (2) years and two (2) months, with a termination date of December 31, 2008. Commissioner Cady seconded the motion that passed 5 – 0.

Reconsideration of BOCC Votes Regarding the Frederick County Planning Commission (FcPc) Vacancy – Commissioner John L. Thompson, Jr. (from 6-20-06 meeting)

Commissioner Thompson opened a discussion regarding the vacancy on the FcPc.

Commissioner Gardner moved to appoint Donna Eichelberer to the FcPc. Commissioner Thompson seconded the motion that failed 2 – 3, with Commissioners Cady, Lovell and Reeder opposed.



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 1-800-633-6101

Robert L. Ehrlich, Jr.
Governor

Kendall P. Philbrick
Secretary

Michael S. Steele
Lt. Governor

August 25, 2006

Jonas A. Jacobson
Deputy Secretary

Mr. Michael G. Marschner, Director
Frederick County Division of Utilities & Solid Waste Management
7303 Marcie's Choice Lane
Frederick, Maryland 21704

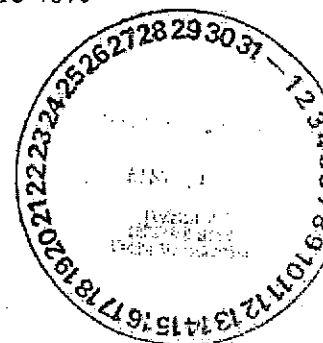
RE: Ballenger-McKinney Wastewater Treatment Plant
Enhanced Nutrient Removal Upgrade and Expansion
Frederick County

Dear Mr. Marschner:

We have reviewed the technical memorandum along with the revised construction cost estimate submitted by Whitman, Requardt and Associates, LLP for the Enhanced Nutrient Removal (ENR) Upgrade and Expansion from 6 million gallons per day (mgd) to 15 mgd for the proposed Ballenger-McKinney WWTP.

Based on our review, the following construction items are eligible for ENR grant participation at the percentages enumerated below:

- Fine Screening Facility is 40% eligible for ENR grant participation. This is needed to ensure that the membrane lumens within the cassettes do not become fouled with debris.
- Conversion of the existing clarifiers to provide flow equalization upstream of the proposed Membrane Bioreactors (MBRs) to accommodate instantaneous peak flows is 40% eligible for ENR grant participation.
- Aeration Basin Modifications are 40% eligible for ENR grant participation.
- Membrane Basins are 40% eligible for ENR participation.
- Return Activated Sludge and Waste Activated Sludge facilities are 40% eligible for ENR participation.
- Supplemental Methanol Feed System is 40% eligible for ENR participation.
- Supplemental Alum Feed System is 40% eligible for ENR grant participation.



Mr. Michael G. Marschner

August 25, 2006

Page 2 of 3

- Improvements to the Post Aeration system are 40% eligible for ENR grant participation.
- Civil and site work including Yard Piping is 27% eligible for ENR grant participation.
- All electrical site work is 27% eligible for ENR grant participation.
- Instrumentation including SCADA system is 27% eligible for ENR grant participation.
- Mobilization & Demobilization activities are 27% eligible for ENR grant participation.

The following construction items are ineligible for ENR grant participation:

All concrete work, excavation, equipment, instrumentation and piping related to the following:

- Influent pump station and Headworks.
- Primary Clarifiers
- Blower facilities.
- UV Disinfection System.
- Effluent outfall
- Ballenger Creek Bridge to access downstream facilities located on the McKinney site.

The ratio of the ENR eligible cost (\$17,620,000) to the total estimated construction cost including contingency (\$67,900,000) is 26.00% and also represents the ENR fund participation by the State. This amount was determined based upon your engineer's revised October 21, 2005 cost estimate and the technical memorandum submitted to the Maryland Department of the Environment (MDE) regarding ENR eligibility.

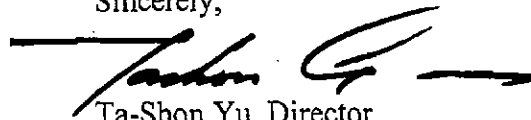
- Total Estimated Contract Construction Cost = \$67,900,000
- Total ENR Eligible Cost (26.00 %) = \$17,620,000
- MDE's ENR Share (@ 100% = 26.00%) = \$17,620,000
- Frederick County's ENR Share (@74.00%) = \$50,280,000

Mr. Michael G. Marschner
August 25, 2006
Page 3 of 3

The costs for the non-construction items, associated with design, construction management and construction inspection, etc., will be prorated on the basis of 26.00% ENR funds. The cost of the local share of ineligible items is \$50,280,000. The actual ENR grant funds for the project, subject to approval from this office and the Board of Public Works, will be adjusted on the actual bid price.

If you have any questions, please feel free to call me at (410) 537-3758, or Dr. Mahmoud Salehi, Project Manager, at (410) 537-3657.

Sincerely,

A handwritten signature in black ink, appearing to read "Ta-Shon Yu", with a horizontal line extending to the right.

Ta-Shon Yu, Director
Technical Services
Water Quality Infrastructure Program
Water Management Administration

TSY: ms

Cc: Jeffrey D. Thompson - WRA
George Keller
Jag Khuman
Missy Martin
Kay Bee
Marya Levelev
Rajiv/Mahmoud